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Before the
Federal Communications Commission JUL - 7 1997
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

GUAM PUBLIC UTILITIES COMMISSION)

Petition for Declaratory Ruling)
concerning Sections 3(37) and 251(h))
of the Communications Act)

CCB Pol. 96-18

Treatment of the Guam Telephone)
Authority and Similarly Situated)
Carriers as Incumbent Local Exchange)
Carriers under Section 251(h)(2))
of the Commission Act)
of a New Study Area)

CC Docket No. 97-134

**COMMENTS
OF
GUAM TELEPHONE AUTHORITY**

Guam Telephone Authority ("GTA"), by its attorneys, hereby submits its
comments in the above-captioned matter.¹

INTRODUCTION

On May 19, 1997 the Federal Communications Commission ("FCC" or
"Commission") released the subject Declaratory Ruling and Notice of Proposed
Rulemaking. The Commission found that GTA was a "rural telephone company"
within the meaning of Section 3(37) of the Communications Act² because it is a Local

¹ Guam Public Utilities Commission, Petition for Declaratory Ruling and Treatment of Guam
Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers
under Section 251(h)(2) of the Communications Act, CCB Pol 96-18 and CC Docket No.
97-134, FCC 97-171, rel. May 19, 1997 ("NPRM").

² 47 U.S.C. § 153(37).

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Exchange Carrier ("LEC") operating entity that provides telephone exchange service to a local exchange study area -- Guam -- with fewer than 100,000 access lines.³

The Commission also found that GTA is not "an incumbent local exchange carrier" within the meaning of Section 251(h)(1) of the Act⁴ because it was not deemed to be a member of the National Exchange Carrier Association, Inc. ("NECA") as of February 8, 1996, the date of enactment of the Telecommunications Act of 1996. The Commission therefore concluded that "the obligations of Section 251(c) do not apply to GTA at this time."⁵

However, recognizing the importance of the question for the development of telecommunications competition on Guam, the Commission initiated a rulemaking to determine "whether GTA should be treated as an incumbent LEC for purposes of Section 251."⁶ In these Comments, GTA supports the Commission's tentative decision to treat GTA as an incumbent LEC.

DISCUSSION

The Commission requests comment on the applicability of Section 251(h)(2) of the Act, which allows the Commission to treat a local exchange carrier as an incumbent if it meets a three part test:

- (A) the LEC occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by an incumbent LEC;
- (B) the LEC has substantially replaced an incumbent LEC;
- and

³ NPRM, ¶ 2.

⁴ 47 U.S.C. § 251(h)(1).

⁵ NPRM, ¶ 3.

⁶ Id.

(C) such treatment is consistent with the public interest convenience and necessity and the purposes of Section 251.

There is no question that the first and third tests under Section 251(h)(2) are met in this case. As the Commission describes, GTA is the sole provider of local exchange and exchange access services on Guam and, in that respect, is certainly comparable to incumbent LECs. Further, GTA believes that the public interest, as well as the purposes of Section 251, would be served by providing for treatment of GTA as an incumbent LEC.

However, the second test of Section 251 (h)(2) is not so easily satisfied. It is necessary for the Commission to rely upon an interpretation of the second requirement so that it is satisfied "where the LEC at issue provides local exchange service to all or virtually all of the subscribers in an area that did not receive local exchange service from a NECA member as of the date of enactment of the 1996 Act."⁷

GTA believes that Section 251(h)(2) was intended to provide for circumstances in which a "new entrant" replaces an incumbent LEC. Indeed that was the interpretation given to the Section by the Commission in the Local Competition Order.⁸ Nevertheless, the situation faced by GTA is virtually unique and clearly not contemplated by Congress when considering Section 251. Since GTA does not intend to seek to avoid the obligations imposed on incumbent LECs, it does not disagree with the interpretation of Section 251(h) proposed by the Commission in the

⁷ NPRM, para. 25.

⁸ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16110 (1996) ("Local Competition Order").

NPRM, in so far as it would be applied to GTA. Indeed, GTA welcomes the opportunity to help bring the benefits of telecommunications competition to Guam.

CONCLUSION

For these reasons, GTA supports the Commission's tentative conclusion that it should provide for the treatment of GTA as an incumbent LEC.

Respectfully submitted,

GUAM TELEPHONE AUTHORITY



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July 7, 1997

CERTIFICATE OF SERVICE

I, Gail M. Mullen, do hereby certify that a copy of the foregoing Comments of the Guam Telephone Authority, was sent by first class United States mail, postage prepaid, or by hand delivery or facsimile where indicated by an asterisk (*), this 7th day of July, 1997 to the following:

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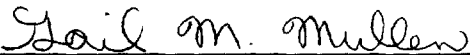
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